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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,030	07/18/2003	Kimberly D. Anderson	KCC 4985 (K-C 19691)	4469

321 7590 08/15/2006

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER	
HILL, LAURA C	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10-623-030			

EXAMINER

ART UNIT	PAPER
	20060814

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary	Application No.	Applicant(s)	
	10/623,030	ANDERSON ET AL.	
	Examiner	Art Unit	
	Laura C. Hill	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 May 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18 and 20-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18 and 20-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 25 May 2006 have been fully considered but they are not persuasive.

1. In response to Applicant's arguments that the Yeo and McFarland references do not disclose or suggest the ink is applied at a resolution of about 100 dots per inch or a design element dimension (see Remarks pages 11-15), the motivation to optimize the result effective variable comes from any of "three sources: the nature of the problem to be solved, the teaching of the prior art and the knowledge of persons of ordinary skill in the art", as per *In re Rouffet*, 149 F3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones,* 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Examiner maintains that it would be obvious to modify the references with the claimed resolution percentages and design element area since McFarland discloses that coloration is produced by varying the area of ink deposition in a given image area frequency of ink deposition and the number of inks (resolution) in the image area (column 17, lines 60-63). Furthermore, McFarland discloses that ink deposition area may be varied by adjusting the frequency, size, or combination thereof of halftone dots (column 17, lines 64-65). Moreover, McFarland discloses a predetermined pattern or image refers to *any* desired array or application of ink onto the fibrous sheet and is inclusive of *all* combinations of patterns ranging from small individual dots to complete coating of the entire surface of the substrate (column

5, lines 11-15). Thus, the motivation to modify the resolution and size of the design area is a recognized result-effective variable in the art as required by *In re Antonie*.

2. In addition, whenever evidence is offered in support of unexpected results (i.e.: darker image than the cited art at the specified resolution values), the burden is on Applicants to show and fully explain : 1) how any differences found are in fact unexpected and unobvious over the teaching of the prior art and 2) that any differences found are of both statistical and practical significance, ***Ex parte Gelles***, 22 USPQ 2d., 1318, 1319 (BPAI 1992), ***Ex parte Ishizaka***, 24 USPQ 2d 1621, 1624 (BPAI 19992). The burden of establishing the unexpected results rests on Appelants, and Appelants must demonstrate that the results obtained in accordance with their invention are truly unexpected, but not just different, ***In re Klosak***, 455 F. 2d 1077, 1080, 173 USPQ 14, 16 (CCPA 1972). The issue is whether the difference shown in the data of record are practically and statistically significant as well as unexpected. Applicants' specification does not address this issue, In re Merck & Co., Inc., 231 USPQ 375 (Fed. Cir 1986); *In re Longi*, 225 USPQ 645 (Fed. Cir. 1985); *In re Freeman*, 177 USPQ 139 (CCPA 1973)

Specification

3. It is noted that there are no outstanding objections to the specification filed 18 July 2003.

Comments

4. It is noted that claim 19 has been cancelled herein in response to the Restriction/Election requirement in the Office action mailed 2 March 2006.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-13, 15-18 and 20-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeo (US 5,503,076; herein 'Yeo') in view of McFarland et al. (US 6,096,412; herein 'McFarland'). Regarding claims 1-3, 15, and 17-18 Yeo discloses a multi-color printed nonwoven web laminate 10 (column 4, lines 8-11) for use in an outer cover of personal care products such as diapers and incontinence garments (column 1, lines 12-14 and column 7, lines 52-57) comprising a fibrous, absorbent facing layer/overlay 12 and substrate layer/additional other component 14, and an image including at least one ink having the color of red, blue, and green 16a, 16b, 16c and inherently black [Note that the primary colors red, blue, green when mixed form black] (column 4, lines 8-16 and figure 1), the image being printed in a non-contact manner via flexographic or ink-jet printing for good print pattern definition (column 8, lines 49-52), the laminate in one embodiment being printed at a line speed of approximately 100 feet per minute (column 10, lines 39-42). Yeo *does not expressly disclose* the colored inks

coverage percentage area values. **McFarland** discloses sanitary disposable paper products (column 4, lines 46-62) having cyan, magenta, yellow and black ink (columns 9-10, Table II), with a black ink density of 0.51-1.41 (columns 23-24, Table V), a cyan ink density of 0.49-1.41 (columns 23-24, Table VI), a magenta ink density of 0.52-6.53 (columns 25-28, Tables VII and VII), a yellow ink density of 0.50-1.21 (columns 27-30, Table VIII). McFarland further discloses the ink deposition area, or amount of ink deposited in a given image area, is a result effective variable since it is a result of the frequency and size of halftone dots (column 17, lines 60-65). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Yeo with the ink coverage percent area values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, when the reference discloses all the limitations of a claim except a property or function (i.e.: does not expressly disclose the coverage percent area values), and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § § 2112- 2112.02.

Regarding claims 4-7 Yeo further discloses the facing layer/outer cover 12 comprises a white background (which inherently is formed via the loading of fibers with titanium dioxide which produces a white color) on which an image such as stars and hearts is printed (column 5, lines 12-16 and figures 1 and 3).

Regarding claims 8-9 Yeo further discloses the image includes a separable design element having a periphery and interior, the interior being free of black ink shading and the design element outlined in black ink (figure 3).

Regarding claim 10 Yeo further discloses the image being printed in a non-contact manner via flexographic or ink-jet printing for good print pattern definition as discussed above with respect to claim 1, the image inherently being printed with the highest threshold of blank ink in order to maximize the image quality.

Regarding claims 11-12 Yeo further discloses a focal element 16b for example (figure 1). Yeo/McFarland *do not expressly disclose* the dimensions of the design elements. The design elements are result effective variables since they are a result of the number of designs placed on the substrate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yeo/McFarland with design elements dimensions, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 13 Yeo discloses water-based inks that may include wax additives (column 6, lines 53-60 and column 7, lines 39-44). Yeo *does not expressly disclose* the inks are wax-based. **McFarland** discloses the ink composition may contain a wax such as polyethylene wax to improve ink rub-off resistance (column 7, lines 42-48). One would be motivated to modify the ink of Yeo with the wax additives for improved resistance to ink rub-off since both references disclose absorbent articles with

multi-colored ink printing. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the ink and thus provide a wax-based ink.

Regarding claim 16 Yeo/McFarland *do not expressly disclose* a color difference value (DE*). Color difference is a result effective variable since it is dependent on the change in lightness and change in chroma as disclosed by Applicant (page 21, paragraph 0049). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yeo/McFarland with the color difference values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). Furthermore, when the reference discloses all the limitations of a claim except a property or function (i.e.: does not expressly disclose the color difference values), and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § § 2112- 2112.02.

Regarding claims 20-22 and 30 Yeo discloses the separable design element is outlined in black as discussed above with respect to claims 1 and 10-12.

Regarding claims 23-26 see the discussion above with respect to claims 1 and 4-7.

Regarding claims 27-29 see the discussion above with respect to claims 13-15.

Regarding claims 31-32 see the discussion above with respect to claims 17-18.

Regarding claim 33 see the discussion above with respect to claims 1 and 16.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yeo (US 5,503,076; herein 'Yeo') in view of McFarland et al. (US 6,096,412; herein 'McFarland'), and further in view of Schleinz et al. (US 5,612,118; herein 'Schleinz'). Yeo/McFarland *do not expressly disclose* the outer cover material that is the printing substrate is made of an extensible material. **Schleinz** discloses absorbent training pant 20 with absorbent at crotch section, liquid permeable liner and elastic outer cover 42 for improved elasticity throughout the pant body, the outer cover having an outer surface 44 with a plurality of printed graphics 46 thereon (column 3, lines 52-58, column 4, lines 21-23, figure 1). One would be motivated to modify the outer cover of Yeo/McFarland with the extensible outer cover of Schleinz for improved elasticity throughout the pant body since both references disclose disposable absorbent articles having graphics printed on the outer cover. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the outer cover, thus providing an elastic and extensible outer cover.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill
Examiner
Art Unit 3761
LCH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER